# HIGH COURT OF UTTARANCHAL AT NAINITAL

## Criminal Misc. Application No.166 of 2006

Narendra Prakash
S/o Narain Prasad
R/o Morganj
Saharanpur, U.P. .....Applicant

Versus

1. State of Uttaranchal
2. C.J.M., Haridwar
3. Virendra Prakash @ Barender
   S/o Sri Narayan Prasad
   R/o 118/A8 .....Respondents

**Dated :- 10.03.2006**

**Hon'ble J.C.S. Rawat, J.**

**1.** The petition under section 482 Cr.P.C. has been filed for quashing the proceedings of case No.6264/2005 State Vs. Narendra Prakash under section 420, 427, 428, 471 IPC pending before the Chief Judicial Magistrate, Haridwar and the summoning order dated 5.12.2002 (Annexure-6 to the petition).

**2.** Brief facts of the case are that an FIR was lodged against the applicant on 27.8.2004 by his real brother Virendra Prakash (respondent No.3) alleging therein that the complainant-respondent No.3 is the youngest brother of the applicant and the father of the complainant died when he was of hardly 2-3 years of age. His father had got the land mutated in favour of all five brothers. But, Naresh Prakash by forged signatures and affixing a forged photograph of another person in the year 1998 got a power of attorney and on the same day entered into an agreement for the sale of land of the complainant, but the actual position was revealed later on and the accused could not succeed in his intention. Thereafter, the applicant got prepared forged khatoni and instituted a case in the Chakbandi court by stating

that he is the owner of the land in question and got his name mutated 100 bighas of land in his favour and thereafter on 10.8.2004 he sold the said land to other person. The police investigated the matter and submitted the chargesheet before the court.

**3.** The Magistrate proceeded on to summon the applicant by way of impugned order dated 5.12.2005. Feeling aggrieved by this, the present petition has been filed before this court.

**4.** I have heard Sri Navneet Kaushik learned counsel for the applicant and Sri G. S. Sandhu learned A.G.A. and perused the record.

**5.** It was contended on behalf of the applicant that the applicant has filed a W.P. No.967/2004(M/B) before this Court against the FIR dated 27.8.2004 lodged by the complainant. In the said petition, the learned G.A. made a statement that the dispute between the parties is civil in nature and therefore the I.O. is not intended to arrest the applicant. It has come in the chargesheet as well as in the FIR that the applicant by forged signatures and affixing a forged photograph of another person in the year 1998 got a power of attorney and on the same day entered into an agreement for the sale of land of the complainant. Thereafter, the applicant got prepared forged khatoni and instituted a case in the Chakbandi court by stating that he is the owner of the land in question and got his name mutated 100 bighas of land in his favour. Perusal of the said allegations reveal that the act of the applicant is a criminal nature. Perusal of the record reveals that there is a prima facie case against the applicant and I do not find any substance in the argument advanced by the learned counsel for the applicant.

**6.** Therefore, I am of view that there is sufficient evidence against the applicant which shows the prima facie case against him at this stage. The petition devoids of merit and is dismissed. However, the applicant can raise these questions before the trial court and the trial court will decide afresh whether the prima facie is made out or not. It is made clear that the trial court will not be influenced by this order.

**(J.C.S. RAWAT, J.)**

Dated 10.03.2006

LSR